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April 16, 2018

Gary Shinnars
Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

Re: Pactiv LLC
Case No. 13-RC-217688

Dear Executive Secretary Shinnars:

On behalf of the Employer and pursuant to Section 102.65 (e) of the Board's Rules and Regulations the undersigned requests that the decision of the Regional Director to deny the Employer's request to file a brief be overruled and that the Regional Director be directed to allow for the filing of briefs.

Facts

The petition was filed on April 3, 2018 and a hearing was initially directed to be held on Wednesday April 11. Because of both professional and personal conflict the undersigned requested that the hearing be postponed for four workdays until April 17. The request was denied. Ultimately, however, the Regional Director did grant an extension of only one day until April 12.

The Union had petitioned for a unit of only one of three identical warehouse facilities operated by the Employer and sought to exclude a significant number of employees classified as leads. The petition did not refer to temporary employees as either being included or excluded. After investigation the Employer determined that the petitioned for unit was inappropriate because it was limited to only one facility and because the leads had a community of interest with the other employees such that they should not be excluded. Also, the Employer concluded that the temporary employees should be excluded, a position to which the parties ultimately agreed.

The Employer has the burden of overcoming the single facility presumption and to do so must provide specific and detailed information regarding among other things -- interchange of employees. As a result, the Employer spent numerous hours in the very few days it was permitted to prepare for the hearing including late in the evening prior to the hearing gathering the



documentation to support its position that a unit of a single facility and excluding the leads was inappropriate.

At the hearing the Hearing Officer advised that the Regional Director had determined that no evidence would be allowed to be presented regarding the leads and that they would be voted subject to challenge. With regard to the single facility issue, the Employer presented four witnesses and 27 exhibits some of which were quite lengthy and data dense.

At the end of the hearing the undersigned requested that the parties be allowed to file briefs because the factually intensive nature of an Employer's burden in overcoming the single facility presumption did not lend itself to oral argument and that a brief would be necessary to adequately analyze the evidence and Board law on this issue and to then apply the applicable Board law to the evidence. However, after discussing the request with the Regional Director, the Hearing Officer advised that Regional Director had determined that briefs would not be allowed. The undersigned filed a special appeal with the Regional Director arguing that it was arbitrary and essentially unfair not to allow the Employer to file a brief given that the Employer has the burden of overcoming the single facility presumption and the very short period of time the Regional Director allowed for preparation of a factually intensive issue. The Regional Director denied the special appeal and the only reason given by the Hearing Officer was that Regional personnel were capable of reading the record and so a brief is unnecessary.

The Regional Director's Decision Is Arbitrary

The Regional Director's decision must be overturned because it is unfair, arbitrary and denies the Employer due process. This denial of due process is especially troublesome - given the nature of the issue - whether the petitioned-for single location unit is inappropriate. The Employer recognizes that it has the burden to overcome the single facility presumption and submits that the evidence presented in this case rebutting the presumption should be found compelling under existing Board law. Nevertheless, the undersigned contends that its client, the Employer, is entitled to counsel presenting compelling factual and legal arguments in the form of a brief to persuade the Regional Director to accept its position that the petitioned-for single location unit is inappropriate and not be forced to rely merely on the representation that Regional personnel were capable of "reading" the record, even when the record contains substantial evidence of centralized management control, little local management autonomy, interchange, similarity of jobs, skills, wages, hours, benefits and other conditions of employment, and a close geographic proximity and integration among the three facilities.

It is submitted that it is only fair and appropriate as matter of due process to allow the Employer the opportunity to best present its arguments to meet its burden and to deny the Employer such opportunity is clearly arbitrary. The Regional Director's decision deprived the Employer a reasonable opportunity to address issues, arguments, and authority and prevented the Employer from even being able to refer to the hearing transcript. Indeed, the only reason given for the denial (i.e. Regional personnel are capable of reading a record) would make briefs unnecessary in every case and is certainly an insufficient basis to deny the Employer's request to file a brief in this matter.

Based on the above, it is hereby requested that the Regional Director's decision to deny the filing a brief be overturned and that the Regional Director be ordered to allow a reasonable period of time for the filing of briefs

Sincerely,

SEYFARTH SHAW LLP

John J. Toner

A handwritten signature in black ink, appearing to read "John J. Toner", with a long horizontal flourish extending to the right.

JJT:vsh/rat

CERTIFICATE OF SERVICE

The undersigned herewith certifies that a copy of the foregoing Employer's Special Appeal was filed on the NLRB website and a copy was served via email, this 16th day of April, 2018, upon:

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